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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 United States of America,  
10 Plaintiff

11 v.  
12 Charles Edward Cooper Jr.,

13 Defendant

14 Case No.: 2:14-cr-228-JAD-CWH

15 **Order Denying Appeal of Magistrate Judge's  
16 Detention Order [Docs. 22, 24]**

17 Charles Edward Cooper Jr. Was indicted on one count of being a felon in possession of a  
18 firearm after officers responding to a domestic-violence call allegedly found him with a 12-gauge  
19 shotgun and two handguns.<sup>1</sup> Magistrate Judge Nancy Koppe found that Cooper poses "a substantial  
20 risk of danger to the community" based on his criminal history, which dates to 1983, and based on  
21 his "recent brutal attack" on his fiancee, Michelle Basolo, and she ordered him detained.<sup>2</sup> Cooper  
22 appeals Magistrate Judge Koppe's detention order based in large part on a new affidavit from  
23 Basolo, which offers a newly revised recount of the events leading to the domestic-violence report:  
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26 <sup>1</sup> Doc. 1 at 2 (indictment); Doc. 25-1 at 2 (arrest report); Doc. 25-2 at 2 (domestic-violence  
report).

27 <sup>2</sup> Doc. 11 at 2.

she “did not even need to go to the emergency room.”<sup>3</sup> The government opposes his release.<sup>4</sup> After reviewing the record and law de novo, I deny Cooper’s motion based on the substantial risk of danger his release would create.

## Discussion

District-court review of a magistrate judge's detention order is performed de novo.<sup>5</sup> "The district court is not required to start over in every case, and proceed as if the magistrate's decision and findings did not exist."<sup>6</sup> Instead, "[i]t should review the evidence before the magistrate and make its own independent determination whether the magistrate's findings are correct, with no deference."<sup>7</sup>

9       Title 18 U.S.C. § 3142(e) requires the court to detain a defendant if “no condition or  
10 combination of conditions will reasonably assure the appearance of the person as required and the  
11 safety of any other person and the community.” The statute requires courts to consider four factors  
12 in determining whether to detain or release a defendant: “(1) the nature and circumstances of the  
13 offense charged, including whether the offense is a crime of violence or involves a narcotic drug; (2)  
14 the weight of the evidence against the person; (3) the history and characteristics of the person; and  
15 (4) the nature and  
16 seriousness of the danger to any person or the community should the person be released.”<sup>8</sup>

<sup>3</sup> Doc. 24 at 10–11; Doc. 24-1 at 2. Identical versions of this motion currently show as pending at Doc. 22 and Doc. 24, so this order resolves the motion at both docket numbers.

<sup>4</sup> Doc. 25

<sup>5</sup> *United States v. Koenig*, 912 F.2d 1190, 1192-93 (9th Cir. 1990).

<sup>6</sup> *Id.* at 1193.

7 Id

<sup>8</sup> *United States v. Chen*, 820 F.Supp. 1205, 1207 (N.D. Cal. 1992) (quoting 18 U.S.C. § 3142(g)). The defendant's relevant history and characteristics include

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

1           **A. Risk of Flight**

2           Cooper first argues that he does not present a risk of nonappearance because he has lived in  
 3 the Las Vegas area nearly his whole life, all his family lives here, his mother and others are willing  
 4 to act as third-party custodians and to interview with pretrial services, he owns a trucking company  
 5 and needs to earn money for payments on his \$70,000 semi-truck, and the three failures to appear  
 6 (“FTAs”) listed on his pretrial-services report occurred 10 to 30 years ago.<sup>9</sup> The government  
 7 disagrees based on Cooper’s multiple FTAs, and it argues that Magistrate Judge Koppe did not  
 8 clearly rule on whether Cooper poses a risk of flight.<sup>10</sup> Magistrate Judge Koppe’s order does not  
 9 directly discuss this prong of the detention test, but instead rules based on a danger-to-the-  
 10 community finding.<sup>11</sup>

11          Cooper’s criminal history is a long record of arrests, pleas, and convictions for crimes  
 12 including robbery with a deadly weapon, murder with a deadly weapon, DUI, possession of and  
 13 trafficking in controlled substances, domestic-violence battery (at least three times before the  
 14 alleged battery giving rise to the instant arrest), kidnapping and sexual assault with substantial  
 15 bodily harm on a victim under 16, and other drug-related charges.<sup>12</sup> He does not dispute the list of  
 16 law-enforcement-related incidents that the government provides “but asks the Court to consider that  
 17 [his] last ‘contact’ with law enforcement, aside from the underlying incident, was in January of  
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21          (B) whether, at the time of the current offense or arrest, the person was on probation, on  
 22 parole, or on other release pending trial, sentencing, appeal, or completion of sentence  
 23 for an offense under Federal, State, or local law . . . 18 U.S.C. § 3142(g)(3)(A)–(B).

24          <sup>9</sup> See Doc. 24 at 6–7. Cooper’s fiancee has been one of the people willing to act as a third-party  
 25 custodian, but because of a pending domestic-violence charge, he is not presently requesting that she  
 26 be appointed. See Doc. 24 at 6, 6 n.4. The domestic-violence charge is not in front of me.

27          <sup>10</sup> See Doc. 25 at 3–4.

28          <sup>11</sup> See generally Doc. 11.

29          <sup>12</sup> See Doc. 25 at 4–6.

1 2009.”<sup>13</sup>

2 I am necessarily concerned about the risk of nonappearance when I read that Cooper has  
 3 sustained 37 arrests, 5 citations, 2 summonses, 6 or 8 felony convictions in 6 cases between 1983 and  
 4 2005, 11 parole violations, and 3 FTAs.<sup>14</sup> This is not the record of an individual who, at least  
 5 historically, respected the law or the community in which he lived. I am cognizant of Cooper’s ties  
 6 with this community: the long time he has lived here, his family members’ support and willingness  
 7 to serve as third-party custodians, his responsibility in owning a trucking company, his financial  
 8 obligations, and the fact that about five years have passed since Cooper’s last contact with law  
 9 enforcement.<sup>15</sup> Cooper’s conduct was apparently improving until this incident. At the same time,  
 10 his community ties did not previously prevent him from violating parole; failing to appear; or, for an  
 11 undetermined length of time, allegedly violating the law prohibiting felons from possessing firearms.  
 12 Because I need not decide this issue to rule on Cooper’s motion, I note my concern about Cooper’s  
 13 nonappearance and do not presently enter a conclusion on whether he is reasonably likely to appear.

14 **B. Danger to the Community**

15 The second part of the detention test asks whether Cooper’s release poses a danger to the  
 16 community, whether at large or to any person.<sup>16</sup> Cooper argues that substantial time has passed  
 17 since his last law-enforcement-related incident, the government failed to carry its burden because its  
 18 argument was overly based on the nature of the charges and weight of the evidence, Magistrate  
 19 Judge Koppe based her decision on overstatements of Basolo’s injuries, and adopting four proposed

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20 <sup>13</sup> Doc. 26 at 2 (discussing the government’s listing of “every contact Mr. Cooper has had with  
 21 law enforcement” and saying that he “has never denied that he has several criminal convictions”).

22 <sup>14</sup> Doc. 24 at 7; Doc. 25 at 4–6. My concern remains even though disposition information is not  
 23 available for every contact Cooper had with the police and courts. *See id.*; *see also* Doc. 26 at 2.  
 24 Cooper describes his criminal record as containing “six felony convictions for violent and drug-related  
 25 offenses,” while observing that a decade has passed since his last felony conviction. Doc. 24 at 10.  
 Perhaps the discrepancy between Cooper’s and the government’s descriptions—whether he was  
 sentenced for six or eight felonies—is resolved by the fact that these convictions apparently occurred  
 in six cases.

26 <sup>15</sup> *See* Doc. 24 at 6–7.

27 <sup>16</sup> 18 U.S.C. § 3142(g)(4).

1 conditions of confinement will adequately address any potential danger caused by Cooper's  
 2 release.<sup>17</sup> The government argues that Cooper's extensive criminal history; the language of Basolo's  
 3 affidavit, which is "consistent with a victim of domestic violence minimizing her attacker's conduct  
 4 in a subsequent effort to exonerate him"; the fact that Cooper apparently qualifies under 18 U.S.C. §  
 5 924(e) as an Armed Career Criminal ("ACC") because he has three or more violent-felony  
 6 convictions; and the risk to Basolo and her daughter because they are potential witnesses against  
 7 Cooper are factors that should prevent release.<sup>18</sup>

8 Magistrate Judge Koppe's detention order finds that Cooper poses a substantial risk of  
 9 danger based on two factors. First, his criminal history dates back to 1983 and "includes crimes of  
 10 violence, drug convictions, probation and parole violations, and failures to appear."<sup>19</sup> She notes that  
 11 she "would be inclined to fashion conditions of release" if Cooper did not have this combination of  
 12 criminal history and his "recent brutal attack" on Basolo.<sup>20</sup> As it stands, she concludes that "no  
 13 conditions or combination of conditions . . . would reasonably protect the community."<sup>21</sup>

14 On independent review, I find that Cooper's extensive criminal history and his attack on  
 15 Basolo, when combined, prevent his release at this time.<sup>22</sup> In Michelle Basolo's voluntary  
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17 <sup>17</sup> Doc. 24 at 7–10 (arguing in part that the weight of the evidence is the least important factor  
 18 under the Ninth Circuit's decisions in *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991) and  
*Untied States v. Winsor*, 785 F.2d 755, 757 (9th Cir. 1986)).

19 <sup>18</sup> Doc. 25 at 4–8. It appears that Basolo's daughter may be a witness because her daughter  
 20 accompanied her to the hospital, wrote her voluntary statement, and is, according to her new affidavit,  
 21 the only reason that Basolo even went to the hospital. See Doc. 25-2 at 2, Doc. 25-3 at 3, Doc. 24-1 at  
 22 2.

23 Cooper argues that his "status under the Armed Career Criminal Act has not yet been determined  
 24 by Probation" and that, even if he has ACC status, it is likely that two out of three qualifying convictions  
 25 are over three decades old. Doc. 26 at 3. Neither party addresses when his most recent qualifying  
 26 violent conviction occurred.

27 <sup>19</sup> Doc. 11 at 2.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> I incorporate my discussion of Cooper's criminal history, in Part A above, by reference into  
 23 this analysis.

1 statement, handwritten by her daughter Briana Basolo “due to her injured writing arm,” Cooper’s  
2 fiancee describes a sustained series of attacks.<sup>23</sup> Cooper first followed her to her nail salon, in  
3 public; when they were home, he allegedly told her, “From now one we’re gonna start doing things  
4 my way.”<sup>24</sup> In response, she said they had “to have a conversation and communicate about [his]  
5 anger,” to which he responded, “[E]xcuse me? Do you want to say that to me again?”<sup>25</sup> Then the  
6 beating started.<sup>26</sup>

7 Basolo's statement says that Cooper "started kicking me and smacking me and hitting me in  
8 the face."<sup>27</sup> When she tried to escape over a wall, "he tried pulling [her]."<sup>28</sup> Basolo returned from  
9 her escape, apparently to wait for her daughter and thinking that Cooper would leave.<sup>29</sup> He then  
10 "pushed [her] to the ground" where she hit her head, "kicked [her] in the ribs and back," hit her  
11 stomach, and "put frozen vegetables on [her] face."<sup>30</sup> She believed she passed out at one point.<sup>31</sup>  
12 Cooper allegedly "was holding [her] down slapping and hitting [her] face," "taking his pants off and  
13 telling [her] to spread her legs," and "wanted to . . . rape [her]."<sup>32</sup>

14 Basolo's recent affidavit tells a different story. Basolo now states that, rather than waiting  
15 for her daughter to help her escape, "[Her] injuries were minor. [She] did not even need to go to the  
16 emergency room that evening. [She] went more out of concern for [her] daughter, who was

<sup>23</sup> Doc. 25-3 at 1-2.

19 | <sup>24</sup> *Id.* at 1.

20 || <sup>25</sup> *Id.*

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24 || 29 *Id.*

25 | <sup>30</sup> *Id.* at 1–2.

26 | <sup>31</sup> *Id.* at 2.

27 || <sup>32</sup> *Id.*

1 concerned because [Basolo] was emotional and upset.”<sup>33</sup> She states that her “entire body was  
2 examined and X-rayed,” showing that she “had no broken or fractured bones.”<sup>34</sup> She denies having  
3 been strangled.<sup>35</sup> Cooper’s arrest report discussed “possible broken or fractured ribs”; the domestic-  
4 violence report noted that Basolo said she was strangled and that she appeared to have “popped  
5 blood vessels in her right eye and around the eye.”<sup>36</sup> According to this new affidavit, Basolo’s  
6 injuries were limited to a “black eye and lacerations on [her] wrist.”<sup>37</sup> Finally, she states that “there  
7 have never been any other incidents of domestic violence,” “[t]his was an isolated incident,” and she  
8 has “no fear” of contact with Cooper.<sup>38</sup>

9       While Cooper argues that Magistrate Judge Koppe based her decision on “overstatements of  
10 the severity of the underlying alleged domestic violence,” it remains apparent that Cooper battered  
11 her so badly that her entire body needed to be examined and x-rayed for potential broken bones, she  
12 was unable to write, and she was given a black eye. The exact cause of her lacerations is unclear,  
13 but it is also concerning that her wrist was injured during this episode. Even if I give full credence  
14 to Basolo’s new story, Cooper was undisputedly violent toward Basolo, and her forgiveness does not  
15 alter that fact.

16 This is Cooper's fourth time in custody for domestic-violence battery.<sup>39</sup> He does not  
17 seriously dispute that he qualifies as an ACC or that he has at least three violent-felony  
18 convictions.<sup>40</sup> And though Cooper argues that significant time has passed since his last brush with

20 | <sup>33</sup> Doc. 24-1.

21 || <sup>34</sup> *Id.*

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<sup>35</sup> *Id.*

<sup>36</sup> Doc. 25-1 at 4; Doc. 25-2 at 2.

24 || <sup>37</sup> Doc. 24-1 at 2.

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<sup>38</sup> *Id.*

<sup>39</sup> See Doc. 25 at 5–6.

<sup>40</sup> See Doc. 26 at 3.

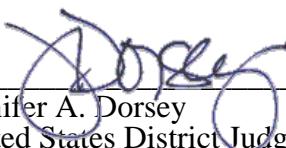
1 the law, he is in custody for illegal possession of three firearms—an allegedly recent violation, not  
2 an old one. “Domestic violence often escalates in severity over time . . . and the presence of a  
3 firearm increases the likelihood that it will escalate to homicide.”<sup>41</sup> For all the reasons discussed in  
4 this order, I conclude that Cooper poses a danger to the community—and particularly to  
5 Basolo—based on his criminal history and his recent conduct. The law requires that he remain  
6 detained at this time.

7 **Conclusion**

8 Accordingly, and with good cause appearing,

9 It is hereby ORDERED that Charles Edward Cooper Jr.’s Review and Appeal to District  
10 Court of Magistrate Court’s Detention Order Pursuant to 18 U.S.C. § 3145(B) [Docs. 22, 24] is  
11 **DENIED.**

12 DATED October 10, 2014.

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16 Jennifer A. Dorsey  
17 United States District Judge

27 <sup>41</sup> *United States v. Castleman*, 134 S. Ct. 1405, 1408 (2014) (citations omitted).